Commission on State Mandates

State Controller's Office Conference with County Auditors

Sacramento, California

October 23, 2013

I. Commission Overview

A. Article XIII B, section 6

1. Historical perspective: In 1978, the voters adopted Proposition 13, which added article XIII A to the Constitution. Article XIII A imposes a limit on the power of state and local governments to levy taxes. In 1979, the voters adopted Proposition 4, which added article XIII B to the Constitution. Article XIII B limits the power of state and local governments to spend their proceeds of taxes, or property tax revenue, by imposing a spending limit.
2. Purpose: The purpose of section 6 is to reimburse local agencies who are subject to the tax and spend limitations imposed by articles XIII A and XIII B, and who are required to expend their proceeds of taxes on state mandated programs. (See *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46; *County of Fresno v. State of California* (1991) 53 Cal.3d 482; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264.)
3. Statutory Creation: Article XIII B, section 6 of the California Constitution requires the state to provide a subvention of funds to reimburse local government for the costs of state-mandated new programs or increased levels of service. The Commission on State Mandates (Commission) was established to render sound quasi-judicial decisions and to provide an effective means of resolving disputes over the existence of state-mandated local programs. In part, this was to relieve increasing reliance by local agencies and school districts on the judicial system. Further, the Legislature declared its intention that the Commission, as a quasi-judicial body, act in a deliberative manner in accordance with the requirements of the Constitution. (Gov. Code, § 17500.) The Commission has sole and exclusive authority to determine mandates. (Gov. Code, § 17552.)

B. Commission's Vision and Mission Statements:

1. Vision: The Commission on State Mandates timely renders sound decisions, in compliance with article XIII B, section 6 of the California Constitution, to resolve disputes regarding reimbursement for state-mandated local programs and relieve unnecessary congestion of the courts.
2. Mission: To fairly and impartially:
    - Hear and determine matters filed by state and local government;
    - Resolve complex legal questions in a deliberative and timely manner; and
    - Produce well-reasoned and lawful decisions.

C. Organizational Structure

1. Organization:

    The Commission consists of seven members:

    - Director of Department of Finance
    - State Controller

- State Treasurer
- Director of Office of Planning and Research
- Two members, each of whom is either a school board member, county supervisor or city council member
- A public member with experience in public finance

2. 12.5 positions:

    - Executive Director (appointed by Commission)
    - Chief Legal Counsel (appointed by Commission)
    - Assistant Executive Director
    - 3 attorney III positions
    - 1 attorney position
    - 1 senior legal analyst position
    - 2.5 associate governmental program analyst positions
    - 1 senior information systems analyst position
    - 1 office technician position

3. Agency

    The Commission is independent and does not report to an agency.

4. List of Current Members, Designees, and Key Staff

    - Michael Cohen, Director of Finance
      Principal Designee: Eraina Ortega, Chief Deputy Director, Policy
      (Commission chairperson)
    - Bill Lockyer, State Treasurer
      Principal Designee: Andre Rivera, Assistant Director of the Centralized Treasury and Securities Management Division
    - John Chiang, State Controller
      Principal Designee: Rick Chivaro, Deputy State Controller and Chief Counsel
      (Commission vice-chairperson)
    - Ken Alex, Director of Office of Planning and Research
    - Sarah Olsen, Public Member
    - Don Saylor, County Supervisor, Yolo County
    - M. Carmen Ramirez, City Council Member, City of Oxnard
    - Heather Halsey, Executive Director (Exempt), is appointed by the Commission.
    - Camille Shelton, Chief Legal Counsel (CEA IV), is appointed by the Commission
    - Jason Hone, Assistant Executive Director

5. Location

    980 Ninth Street, Suite 300
    Sacramento, CA 95814

6. Contacts

    - Heather Halsey, Executive Director
      heather.halsey@csm.ca.gov

- Jason Hone, Assistant Executive Director
  jason.hone@csm.ca.gov
- Camille Shelton, Chief Legal Counsel
  camille.shelton@csm.ca.gov

Commission Number
(916) 323-3562

7. Commission Decision-Making

   a. Meetings

The Commission is required to conduct at least six meetings per year. Therefore, we generally hold bimonthly meetings. There is one meeting remaining in 2013 on December 6. There are six meetings set for 2014:

- January 24, 2014
- March 28, 2014
- May 30, 2014
- July 25, 2014
- September 26, 2014
- December 5, 2014

The Commission also has two tentative dates set for meetings in case we need to complete additional business:

- June 27, 2014 (**Tentative**)
- October 24, 2014 (**Tentative**)

   b. Agenda materials and supporting documentation are uploaded to the Commission's website about 14 days before each hearing at http://www.csm.ca.gov/hearing.shtml

D. Reporting Requirements

Reports to the Legislature

1. Approved Mandates. At least twice each year, the Commission is required to report to the Legislature on the number of mandates it has found, the estimated statewide costs of these mandates, and the reasons for recommending reimbursement.[1] This report notifies the Legislature of the state's liability for the costs of new programs or higher levels of service under article XIII B, section 6 of the California Constitution and "costs mandated by the state" pursuant to Government Code section 17514.
2. Denied Mandates. The Commission is also required to annually report (January 15) on the number of mandates it denied.[2]
3. Incorrect Reduction Claims. The Commission is required to annually report (January 15) on the number of incorrect reduction claim determinations it has made.[3]

   These reports may be found on the Commission's website at http://www.csm.ca.gov/leg_reports.shtml.

[1] Government Code section 17600.

[2] Government Code section 17601.

[3] Government Code section 17602.

4. Test Claim Decisions. Not later than 30 days after hearing and deciding upon a test claim and determining the amount to be subvened, the Commission is required to notify the appropriate Senate and Assembly policy and fiscal committees, the Legislative Analyst, the Department of Finance, and the Controller of that decision.[4]

Report to Department of Finance

The Commission is required to report annually (September 15) to the Department of Finance on its pending caseload.[5] You may find these reports on the Commission's website at http://www.csm.ca.gov/report_dof.shtml.

E. Description of Agency Programs

1. Mandate Determination Overview

Under the mandates process, local governments (cities, counties, special districts, K-12 school districts, and community college districts) may file "test claims" with the Commission alleging that statutes, regulations, and executive orders enacted by the Governor, the Legislature, or state agencies, impose new programs or increased levels of service upon local entities. As currently defined, "test claim" means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. (Gov. Code, §17521.)

After receipt of public comment, the Commission hears test claims and determines whether or not they are reimbursable state-mandated programs. If a test claim is approved, the Commission determines the amount to be subvened to local agencies or school districts for reimbursement through the adoption of parameters and guidelines. Parameters and guidelines may specify reimbursement based on actual costs or include a reasonable reimbursement methodology. The Commission is also required to adopt and report to the Legislature estimates of the statewide costs of mandated programs.

2. Implementing Statutes (Gov. Code, § 17500 et al.)

Gov. Code, § 17500 – The Commission shall render sound quasi-judicial decisions and provide an effective means of resolving disputes over the existence of state-mandated local programs. The Legislature also intends that the Commission will act in a deliberative manner in accordance with the requirements of article XIII B, section 6.

Gov. Code, § 17561 – The state shall reimburse each local agency and school district for all costs mandated by the state as defined by section 17514.

Gov. Code, § 17514 – "Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute or executive order enacted or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of section 6, article XIII B.

Gov. Code, § 17516 – defines "executive order" subject to article XIII B, section 6. As originally enacted, the statute excluded "any order, plan requirement, rule, or regulation issued by the State Water Resources Control Board or by any regional water quality control board pursuant to Division 7 (commencing with Section 13000) of the Water Code" from reimbursement under article XIII B, section 6. In 2007, the Second District Court of Appeal held that the statute was unconstitutional. (*County of Los Angeles v. Commission on State*

[4] Government Code section 17555.

[5] Annual Budget Act (Stats. 2011, ch. 33, SB 87).

Mandates (2007) 150 Cal.App.4th 898.) In 2010, Government Code section 17516 was amended to conform to the court's decision, and now defines "executive order" as follows:

"Executive order" means any order, plan, requirement, rule, or regulation issued by any of the following:

(a) The Governor.

(b) Any officer or official serving at the pleasure of the Governor.

(c) Any agency, department, board, or commission of state government.

Gov. Code, §§ 17518, 17519, 17520 – define "local agency", "school district", and "special district," respectively.

See *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334, for discussion of the statutory scheme

3. Backlog. This program is backlogged. Government Code section 17553 requires the Commission to adopt procedures to ensure that a statewide cost estimate is adopted within 12-18 months after receipt of a test claim when a determination is made by the Commission that a mandate exists. This statutory requirement cannot be implemented based on existing staffing and budget. There are currently 25 test claims pending on the Commission's caseload. (See CSM website at http://www.csm.ca.gov/pending_caseload.php.) The backlog exists for several reasons:

   - 1984 – When the Commission was created, the statutes allowed the filing of test claims on statutes and regulations going back to 1975, with no statute of limitations
   - 2002 (A.B. 3000) – This bill imposed a three-year (from the effective date of the statute or regulation) statute of limitations for the filing of test claims. It also provided a one-year grandfather clause to file test claims on statutes and regulations going back to 1975, resulting in 51 new test claims filed in fiscal year 2002-03, and 23 test claims filed in 2003-2004.
   - Since 2002 - Reductions in the Commission's position authority from 17 PYs to 10.5 PYs.
   - 2004 (A.B. 2856) – The statute of limitations provision was amended to one year from the effective date of a statute or regulation, or the date of first incurring costs.
   - 2004-2006 (A.B. 2851, 2855, 138, 1805; S.B. 512, 1895) – The Legislature directed the Commission to reconsider 14 test claims. In 2009, the court found the reconsideration statutes unconstitutional and directed Commission to set several reconsideration decisions aside.

     As a result of the Third District Court of Appeal decision, Statutes 2010, chapter 719 (SB 856) added section 17570 to the Government Code, to establish a new process for redetermining existing mandates. Under this process, the Commission may adopt a new test claim decision to supersede a previously adopted one only upon a showing that the state's liability for that test claim decision pursuant to the California Constitution has been modified based on a "subsequent change in law."

To date, the Commission has received one request to redetermine an existing mandate. If the Commission receives more redetermination requests, this will contribute to the Commission's backlog.

- *Stormwater Claims*. As stated previously, local governments may file test claims on statutes, and executive orders issued by the Governor or a state agency. Prior to 2010, Government Code section 17516(c) defined 'executive orders' to exclude any order, plan, or regulation issued by the State Water Resources Control Board or any regional water quality control board. Therefore, local governments were not authorized to file test claims on changes made to regional water permits. Government Code section 17516(c) was ruled unconstitutional by the courts. As a result, local agencies filed 15 new water permit test claims. The Commission decided five of the water claims, but those claims are currently being litigated. There are 10 remaining water permit test claims, some of which have been stayed pending the outcome of that litigation.

II. Mandates Analysis

A. Procedural and Jurisdictional Issues

1. Standard of review for Commission decisions.

   a. The determination of whether local government is entitled to reimbursement under article XIII B, section 6 is a question of law and not a question of equity. (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.)

   b. Government Code section 17559 provides authority for a claimant or the state to commence a proceeding in accordance with Code of Civil Procedure section 1094.5 (Administrative Mandamus) to set aside any quasi-judicial decision of the Commission on the ground that the decision is not supported by substantial evidence. Under the substantial evidence test, the trial court reviews the evidence adduced at the administrative hearing to determine whether there is substantial evidence to support the agency's finding in light of the whole record. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514-515; *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 814.) The Commission's findings of fact are accorded great weight unless shown to be clearly erroneous. (*City of Merced v. State of California* (1984) 154 Cal.App.3d 777, 782.)

   c. Statute of limitations to challenge a Commission decision in court is three years. (*Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 534; Code Civ. Proc., §338(1).)

2. Standing to seek reimbursement under article XIII B, section 6.

   a. Cities, counties, K-12 school districts, county offices of education, and community college districts are local government entities eligible to claim reimbursement under article XIII B, section 6. (See Gov. Code, § 17511, 17515, 17518, 17519, 17520.)

   b. Special districts, joint power authorities, redevelopment agencies, and other prospective claimants.

      1) Claimant's interest in the program must be direct.

         In *Kinlaw*, supra, 54 Cal.3d at pages 334-335, medically indigent adults and taxpayers brought an action against the state alleging that the state violated article XIII B, section 6 by enacting statutes that shifted financial responsibility

for the funding of health care for medically indigent adults to the counties. The Supreme Court denied the claim, holding that the medically indigent adults and taxpayers lacked standing to prosecute the action and that the plaintiffs have no right to reimbursement under article XIII B, section 6. The court stated the following: "Plaintiffs' argument that they must be permitted to enforce section 6 as individuals because their right to adequate health care services has been compromised by the failure of the state to reimburse the county for the cost of services to medically indigent adults is unpersuasive. Plaintiffs' interest, although pressing, is indirect and does not differ from the interest of the public at large in the financial plight of local government. Although the basis for the claim that the state must reimburse the county for its costs of providing the care that was formerly available to plaintiffs under Medi-Cal is that AB 799 created a state mandate, plaintiffs have no right to have any reimbursement expended for health care services of any kind."

2) Claimant must be subject to the tax and spend limitations of articles XIII A and XIII B.

   a) Reimbursement is not required when the costs are for expenses that are recoverable from sources other than tax revenue; i.e., service charges, fees, or assessments (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.) Redevelopment agencies were found not subject to article XIII B, section 6 since they were not bound by the spending limitations in article XIII B, and were not required to expend any proceeds of taxes. (*Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 65 Cal.App.4th 976, 986. The Third District Court of Appeal adopted the reasoning of the *Redevelopment Agency decision in City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281.)

   b) Stats. 2004, ch. 890 (A.B. 2856) amended Government Code section 17520 to delete joint power agencies and redevelopment agencies from the definition of "special district."

   c) In 2006, the Second District Court of Appeal issued an unpublished decision finding that CSAC Excess Insurance Authority (a joint powers authority) had no standing to claim reimbursement for its costs under article XIII B, section 6 based on the statutory amendment to Government Code 17520. The court determined, however, that the JPA had standing to claim reimbursement on behalf of its county members, *in a representative capacity*, for costs incurred by the counties. (*CSAC Excess Insurance Authority v. Commission on State Mandates, Second District Court of Appeal*, Case No. B188169, issued December 22, 2006.)

3) There must be an expenditure of local government proceeds of taxes and not just a reduction of that revenue. *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264 –involved statutes that reduced the local agency's receipt of tax revenues and transferred the reduced portion to the Educational Revenue Augmentation Fund (ERAF) for distribution to schools. The court held that the amount reduced was not reimbursable since there was no expenditure of tax proceeds. The court held that the statutes did not result in "increased actual expenditures."

3. Statutes or executive orders pled must be enacted after January 1, 1975.

B. Substantive Mandates Analysis

1. Basic Elements

a. Increased costs alone do not result in a reimbursable state-mandated program.

b. Required elements that trigger the reimbursement requirement:

- The state must be requiring local government to perform a mandated activity.
- That activity must be newly required and constitute a new program or higher level of service when compared to prior law.
- There must be evidence that local government has or will incur increased costs mandated by the state.
- None of the exceptions to reimbursement identified in Government Code section 17556 apply to the activity.

2. Detailed Analysis and Case Law

a. Do the test claim statutes or executive orders *require* local agencies to perform an activity or task?

1) Identify the required activities identified in the statute or executive order.

2) Is local government legally compelled to perform that activity?

a) Legal Compulsion - Does the plain language of the statute or regulation legally compel local government to perform an activity– "may" vs. "shall"

i. Required activities triggered by local discretionary decision do not result in a mandated program.

City of Merced v. State of California (1984) 153 Cal.App.3d 777 involved statutes requiring the payment of goodwill when property is taken by the government through eminent domain. The eminent domain statutes state that the use of eminent domain by a governmental agency is a discretionary act. However, the test claim statutes kicked in and required the payment for loss of goodwill when the agency exercised its discretionary power to take property by eminent domain. Even though the local agencies experienced increased costs, the court found that the test claim statutes did not mandate, or require, local agencies to perform any activities since the act of eminent domain was discretionary. (See also *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, which affirmed *City of Merced*.)

Department of Finance v. Commission on State Mandates (2003) 30 Cal.4th 727 (*Kern*) involved statutes that required school site councils to comply with the open meeting provisions of preparing and posting an agenda, making their meetings open to the public. The court found that the test claim statutes did not impose a state mandate since the establishment of a school site council was completely within the discretion of school districts.

b) Practical Compulsion – requires substantial evidence in the record that local government has no reasonable alternative but to comply with the activity – or a showing that the failure to comply with the activity will result in certain and severe penalties, or other draconian consequences.

Department of Finance v. Commission on State Mandates (2003) 30 Cal.4th 727 (*Kern*) and *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887-888 – left open the question whether strict legal compulsion is necessarily required under the constitutional definition of "mandate." The court did suggest, however, that a state mandate requires either strict legal compulsion or "certain and severe penalties such as double taxation and other draconian consequences."

Department of Finance v. Commission on State Mandates (2009) 170 Cal.App.4th 1355, addressed the Commission's decision approving reimbursement to school districts and special districts that employ peace officers for complying with the Peace Officer Procedural Bill of Rights Act (POBRA). The court held that to make a showing of practical compulsion as a matter of law, a claimant must make a concrete factual showing that not complying with a program will result in severe adverse consequences, and that exercising the authority to comply is the only reasonable means to carry out core mandatory functions. This requires substantial evidence in the record. The court found that school districts and most special districts were not legally compelled by the law to hire peace officers, but had the authority to employ them. The court also found that the school districts and special districts did not make a showing that hiring their own peace officers, rather than relying upon the county or city in which it is embedded, was the only way as a practical matter to comply.

b. <u>Is the mandated activity new and impose a new program or higher level of service?</u>

1. Is the mandate newly required? Must compare the test claim statutes or executive orders to the legal requirements *immediately before* the enactment of the test claim statutes or executive orders. (See *Lucia Mar*, supra, 44 Cal.3d 830, 835.)

   a) **Beware of Unintended Consequences**: Government Code section 17565 states that "if a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate." This is consistent with the constitutional requirement to reimburse for *state-mandated* costs, since the costs in this case, though not new, were not mandated by the state prior to the new law. This rule is the subject of much confusion and heartburn. For example, during one budget crisis in the 1990s, several statutes containing reimbursable mandated activities and non-reimbursable pre-1975 activities were repealed to achieve budget savings. Local government continued to perform the activities. The following year, the activities were reenacted and required again. This resulted in the enactment of large reimbursable new programs, since after reenactment whole programs (as opposed to discrete new activities added post-1975) were new and thus reimbursable due to the gap in time between repeal and reenactment.

2. Has there been a new shift of funds between the state and local government?

   a) Historically, needed 2 factors: (1) Before, and after, the test claim statutes or executive orders, the state had complete administrative control over the program; and (2) before the test claim statutes or executive orders, the state had borne the entire cost of the program. If these factors are satisfied, then there is a new program. (*County of San Diego, supra* – test claim statutes

shifted the cost of medical care for medically indigent adults from the state to the counties. At the time the voters adopted section 6, the state was paying 100% of the medical care. The court found a "new program" and held that "section 6 prohibits the state from shifting to counties the costs of state programs for which the state assumed complete financial responsibility before the adoption of section 6.")

Compare, *County of Sonoma*, supra –the court found that the ERAF statutes did not impose a new program or higher level and found that "neither *Lucia Mar* nor *County of San Diego* held that subvention would be required for a change in allocation of the percentage of responsibility for a program [in this case, education] that has always been jointly funded by state and local governments." (See also, *City of El Monte* decision on the ERAF statutes, which contains the same finding, with similar language.)

b) Proposition 1A, enacted by the voters in November 2004, amended article XIII B, section 6, subd. (c), for counties and cities to provide that "a mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, and special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility. Thus, Proposition 1A would have changed the result in the *County of Sonoma* case. Proposition 1A does not apply to school district or community college district mandates.

c) Also compare *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, where the shift in costs was between 2 local entities. Court held there is no new program or higher level of service when the shift of costs was between two local entities. This case involved statutes authorizing counties to charge cities for the costs of booking arrestees into county jails. The court held "it is clear that counties and cities were intended to be treated alike as part of 'local government'; both are considered local agencies or political subdivisions of the State. Nothing in article XIII B prohibits the shifting of costs between local governmental entities." (Id. at 1815.) Proposition 1A does not change this result.

3. Do the new activities constitute a new program or higher level of service?

a) Definition of "program" found in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46 as follows:

1) Activities that carry out the governmental function of providing services to the public (*Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, finding that regulations requiring that firefighters be given protective clothing and equipment constituted a new program or higher level of service since fire protection is a basic function of local government; *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, finding that education is a peculiarly governmental function); or

2) Activities that impose unique requirements on local government and do not generally apply to all residents and entities in the state (*County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, finding that regulations imposing

certain safety precautions for all elevators, both public and private alike, was not unique to local government; *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, finding that statutes which eliminated an exemption from providing workers' compensation death benefits to local safety members was not unique to local government since all employers, public and private alike, are required to provide workers' compensation benefits; See also *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46 and *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.)

b) Other Cases interpreting "a new program or higher level of service"

i. Prior law is general, but test claim statutes or executive orders mandate specific requirements: *Long Beach Unified School District v.* State (1990) 225 Cal.App.3d 155 involved statutes requiring the alleviation of racial and ethnic segregation in schools. The court acknowledged prior constitutional and case law requirements that schools had to alleviate segregation. But, the court found a higher level of service b/c while the prior case law suggested certain steps to alleviate the segregation, the test claim statutes required specific actions.

ii. Increased costs alone are not a new program/higher level of service: *City of Anaheim v. State* (1987) 189 Cal.App.3d 1478 involved statutes that imposed a temporary increase in PERS benefits to retired employees that resulted in higher contributions by local agencies. The court found that: "Increasing the cost of providing services cannot be equated with requiring an increased level of service under a section 6 analysis. A higher cost to local government for compensating its employees is not the same as a higher cost of providing a service to the public." (See also, *City of Richmond*, supra, 64 Cal.App.3d at 1196.)

iii. Higher level of service in an existing program – the test claim statutes or executive orders must "increase the level or quality of governmental services provided." Reimbursement is not required if the test claim statutes or executive orders merely implement some change that increases the cost of providing a service. (*San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal. 4th 859, 877.)

iv. Compare - redirection of efforts within the program: The test claim statute in *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, required local law enforcement officers who normally respond to domestic violence calls to take a two-hour continuing education course on domestic violence every two years. Under existing law, local law enforcement officers were already required to receive 24 hours of continuing education training every two years. This hourly requirement did not increase as a result of the test claim statute. (Id. at pp. 1179-1180.) The court held that "while the County may lose some flexibility in tailoring its training programs, such loss of flexibility does not rise to the level of a state mandated reimbursable program because the loss of flexibility is incidental to the greater goal of providing domestic violence training." (Id. at p. 1194.)

c. <u>Do the test claim statutes or executive orders impose "costs mandated by the state"?</u>

1. Gov. Code, § 17514 – defines "costs mandated by the state" – need increased costs.

2. Gov. Code, § 17564 – local agencies only need to show that the program costs $1000 to be eligible for reimbursement. Requires substantial evidence in the record.

3. Statutory exceptions to reimbursement – Government Code section 17556

   (a) Local agency request. Need evidence in the record of a request – A resolution from the governing body or a letter from a delegated representative of the governing body of the local government that requests authorization for that entity to implement the program constitutes a request. Supporting a bill does not constitute a request.

   (b) Test claim statute or executive order was declared existing law by the court.

   (c) Test claim statute or executive order implemented a federal law and results in costs mandated by the federal government, unless the test claim statute or executive order mandates costs which exceed the federal mandate.

   Gov. Code, § 17513 defines "costs mandated by the federal government" and includes costs resulting from enactment of a state law where failure to enact that law to meet specific federal requirements would result in substantial monetary penalties or loss of funds to public or private persons, whether the federal law was enacted before or after the enactment of the state law, regulation, or executive order.

   City of Sacramento v. State of California (1990) 50 Cal.3d 51, 70 gives test to determine whether there is a federal mandate – strict legal compulsion is not required - must look at factors (nature and purpose of the federal program, is there an intent to coerce the state the comply, when participation in the program began, the penalties for withdrawal or noncompliance, other consequences for failure to participate.)

   Hayes v. Commission on State Mandates (1992) 11 Cal.App.4th 1564 – gives test to determine whether the state's compliance with the federal mandate imposes a reimbursable state-mandated program on local agencies. In other words, there is a federal mandate; but does the state statute or executive order implementing the federal mandate impose a reimbursable state mandated program on local agencies?

   County of Los Angeles v. Commission on State Mandates (1995) 32 Cal.App.4th 805 – involved statutes requiring counties to pay for experts and investigators hired by an indigent defendant in a murder case to assist in the preparation of the defense. The court held that the statute merely codified the 6th and 14th Amendments to the U.S. Constitution, which provides that indigent defendants have a right to counsel and experts to assist counsel in the defense. Thus, no reimbursement was required b/c there were no costs mandated by the state.

   San Diego Unified School Dist. v. Commission on State Mandates (2004) 33 Cal.4th 859, 880 – statutes involved, in part, a mandatory recommendation to expel and mandatory due process expulsion hearing. The due process hearing had to comply with the basic federal

due process requirements. But, in the absence of the test claim statute that required the principal to recommend expulsion for certain offenses, a school district would not automatically incur the due process hearing costs that are mandated by federal law. Court found a state mandate and all costs, including costs incurred to comply with federal due process procedures, were reimbursable because the state made the triggering decision about when to expel. The statute left no discretion for those offenses to local officials. Compare – statutes where the triggering decision is discretionary on the part of the local entity, and that discretionary decision triggers a federal constitutional mandate to provide a due process hearing. When the triggering decision is discretionary on the part of the local entity, and the state hearing procedures, which may exceed federal requirements (but the excess state procedures are "incidental" to federal law and the costs are "de minimis"), such costs constitute a part and parcel of the federal mandate, and are not reimbursable. (*San Diego Unified*, supra, p. 888-890.)

(d) Fee, service charge or assessment authority sufficient to pay for the mandated costs of the program. Applies whether or not authority is exercised.

See, *Connell v. Santa Margarita Water District* (1998) 59 Cal.App.4th 382 – involved statutes that authorized water districts to impose a fee. The water district contended that the fee authority was not sufficient to cover the costs. The court looked at the dictionary definition of "authority" (meaning the right or power to do something) and found that as long as a local agency has the right or the power to levy fees sufficient to cover the costs, reimbursement is not required. The court rejected the argument that the fee authority granted by a statute must be analyzed in light of the surrounding economic circumstances.

Clovis Unified School Dist. v. Chiang (2010) 188 Cal.App.4th 794 – addressed the fee issue with respect to the Health Fee Elimination program. The statutory scheme provides that the CCD "may" require students to pay a fee for health supervision and services. The State Controller's Office reduced reimbursement claims by the amounts the CCDs are statutorily authorized to charge, even when a district chooses not to charge the fees. The court held that to the extent a local agency or school district "has the authority" to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost. The claimants can choose not to require the fee, but not at the state's expense.

(e) The test claim statutes or executive orders, or an appropriation in a Budget Act or other bill, provides for offsetting savings which result in no net costs, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the costs of the state mandate.

Department of Finance v. Commission on State Mandates (Kern), supra – court found that the school districts failed to show that existing funding for the school site council programs was inadequate to cover the costs incurred as a result of the test claim requirements. The court found significant that none of the school site council statutes precluded schools from using the funds they

received to pay for the administrative costs of preparing and posting an agenda. Also, one of the statutes specifically authorized districts to use the funds for administrative expenses up to 6%.

(f) The test claim statute or executive order imposes duties that are necessary to implement or expressly included in a ballot measure approved by the voters in a statewide election.

CSBA v. State of California (2009) 171 Cal.App.4th 1183. Duties imposed by a test claim statute or executive order are necessary to implement a ballot measure approved by the voters in a statewide or local election pursuant to Government Code section 17556, subdivision (f), when:

- Local government is mandated by a ballot measure to perform a duty.
- The Legislature or any state agency enacts a statute or executive order intended to implement the ballot measure mandate and also requires additional duties that are not expressly included in the ballot measure.
- Absent the statute or executive order enacted by the Legislature or any state agency, local government is still required to comply with the duty mandated by the ballot measure.
- The requirements imposed by the statute or executive order that exceed the ballot measure mandate are not reimbursable, but are considered part and parcel to the underlying ballot measure mandate, when the excess requirements are intended to implement (i.e., are incidental to) the ballot measure mandate, and whose costs are, in context, de minimis.

(g) The test claim statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction (On 2 previous test claims, the Commission found that the "but only" language encompassed those activities that directly relate to the enforcement of the statute that changed the penalty for a crime, from arrest through conviction and sentencing. These activities include capture, detention, prosecution, defense, sentencing, and appeals. The exception did not include new administrative activities associated with the changed penalty.)

C. Parameters and Guidelines for Approved Test Claims

a) Gov. Code, §§ 17557 (requires the adoption of parameters and guidelines, defines period of reimbursement beginning the fiscal year before the test claim is filed, allows for amendments to parameters and guidelines as specified), 17558 et seq. (describes Controller's responsibilities after Ps and Gs are adopted)

b) The claimant is required to submit proposed parameters and guidelines 30 days after the statement of decision is adopted. (Gov. Code, § 17557.)

c) The parameters and guidelines define the eligible claimants, the period of reimbursement, the reimbursable activities, direct and indirect costs, supporting documentation required to be submitted to the Controller's Office, and identification of offsetting revenue or savings. (Cal. Code Regs., tit. 2, § 1183.1.)

d) Reimbursable activities include those activities expressly approved in the Commission's statement of decision *and* those activities that the Commission determines are reasonably necessary to carry out the mandate based on substantial evidence in the record. (Gov. Code, §§ 17557; Cal. Code Regs, tit. 2,§ 1183.1.)

e) Statutes 2004, chapter 890 (A.B. 2856) added Government Code section 17518.5 and amended Government Code section 17557 to encourage reimbursement for mandated programs based on a "reasonable reimbursement methodology," included in the parameters and guidelines instead of on actual costs. "Reasonable reimbursement methodology" shall be based on (1) cost information from a representative sample of eligible claimants, information provided by associations of local agencies or school districts, or other projections of local costs; and (2) must consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.

   A reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other appropriations of local costs mandated by the state, rather than detailed documentation of actual local costs.

f) Government Code section 17557.1 provides an alternative procedure through which Finance and the claimant can jointly agree to a "reasonable reimbursement methodology." This functions like a settlement and the Commission only approves it as to form. So far, there has only been one joint RRM reached.

g) Parameters and guidelines may also be amended pursuant to Government Code section 17557 to:

   1) Delete a reimbursable activity that has been repealed by statute or executive order
   2) Update offsetting revenue
   3) Include a reasonable reimbursement methodology
   4) Clarify the reimbursable activities
   5) Define activities that are not reimbursable
   6) Consolidate the parameters and guidelines from two or more related programs.
   7) Amend boilerplate language governing the claiming process.

   Unlike test claims, there is no statutory timeframe for completing requests to amend the parameters and guidelines.

D. Statewide Cost Estimate

After the Commission adopts parameters and guidelines, those parameters and guidelines are sent to the State Controller's Office to issue claiming instructions. The SCO has 90 days to issue claiming instructions. Local government then has 120 days to file their initial reimbursement claim with the SCO. Following the receipt of the initial reimbursement claims, the Commission estimates the statewide costs and sends the statewide cost estimate to the Legislature.

E. Incorrect Reduction Claims

1. Local agencies and school districts file claims for reimbursement for mandated programs with the State Controller's Office. The State Controller is authorized to reduce reimbursement claims it deems excessive or unreasonable. If the State Controller reduces a reimbursement claim, a local agency or school district may file an incorrect reduction claim with the Commission alleging that the State Controller incorrectly reduced the

claim. The Commission is required to hear these claims and determine if the claims were incorrectly reduced.

This program is also backlogged. There are currently 102 incorrect reduction claims pending before the Commission that allege the State Controller incorrectly reduced reimbursement claims of local agencies and school districts.

Unlike test claims, there is no statutory timeframe for completing incorrect reduction claims. The number of incorrect reduction claims on file with the Commission varies greatly from fiscal year to fiscal year. Today, neither the current position authority nor budget is adequate to timely complete incorrect reduction claims. Nevertheless, in response to a 2009 Bureau of State Audits report on the mandates process, the Commission completed 60 incorrect reduction claims in fiscal years 11/12 and the first half of 12/13, and has a workplan to complete the remaining incorrect reduction claims.

2. Potential Issues

   a. Whether a cost claimed is reimbursable under the Commission's statement of decision and parameters and guidelines. These issues generally present questions of law.

   b. Whether the Controller's audit methods and reduction of costs are correct. Although the Controller's Office is required to follow the parameters and guidelines when auditing a claim for mandate reimbursement, the Controller has broad discretion in its audit and determination of what is properly reimbursable. Government Code section 12410 provides in relevant part: "Whenever, in [the Controller's] opinion, the audit provided for by [Government Code section 925 et seq.] is not adequate, the Controller *may make such field or other audit* of any claim or disbursement of state money *as may be appropriate to such determination*."

      With audit issues, the Commission must determine whether the Controller's audit decisions were arbitrary, capricious, or entirely lacking in evidentiary support. (*American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.)

F. Requests for Redetermination

In 2010, Government Code section 17556 was amended to clarify that the exceptions apply even if the local agency request; the court, federal, or electorate mandate; the fee authority or appropriation; or new crime or infraction is enacted before or after the enactment of the test claim statute. 17556 also allows a party to request that the Commission re-determine a prior test claim decision based on a subsequent change in the law that changes the state's mandate liability, pursuant to Government Code section 17570. (Stats. 2010, ch. 856.) The first request for redetermination was filed in January 2013 and is currently pending.

The redetermination statutes are being challenged in *California School Boards Assoc., et al. v. State of California, Commission on State Mandates, John Chiang, as State Controller, and Ana Matosantos, as Director of the Department of Finance,* Alameda County Superior Court, Case No. RG11554698